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## **U.S. Army Corps of Engineers Verification**



DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET, 16th Floor  
SAN FRANCISCO, CALIFORNIA 94103-1398

JAN 18 2008



Regulatory Division

SUBJECT: File No. 2008-00031N

Mr. Douglas P. Schleusner  
Executive Director  
Trinity River Restoration Program  
P.O. Box 1300  
Weaverville, California 96093

Dear Mr. Schleusner:

This letter is in response to your submittal (*Request for Verification of Revised Jurisdictional Delineation of Waters of the U.S. for Trinity River Mechanical Channel Rehabilitation Project: Lewiston 1-4 and Dark Gulch*) dated September 28, 2007, requesting confirmation of the extent of Corps of Engineers jurisdiction at rehabilitation sites Lewiston 1-4 and Dark Gulch, located on the Trinity River in five work section within River Miles 111.50 and 110.59, southwest of Lewiston Dam and Lake, in Trinity County, California.

Enclosed is a map showing the extent and location of Corps of Engineers jurisdiction (Enclosure 1). We have based this jurisdictional delineation on the current conditions on the site as verified during a site visit conducted by our Eureka Office staff on September 15, 2006. The 2006 site visit was conducted to verify the original wetland delineation by North State Resources, Inc. in the document, *Trinity River Mechanical Channel Rehabilitation Project Lewiston 1-4 and Dark Gulch Sites, Delineation of waters of the U.S. including Wetlands*, prepared for the Trinity River Restoration Program, dated November 2005. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be completed before that date. Since your delineation information was received before June 5, 2007, the effective date of the official interagency guidance interpreting the Supreme Court decision, *Rapanos v. United States*, 126 S. Ct. 2208 (2006), the Corps did not apply this guidance to the delineation in rendering this jurisdictional determination.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

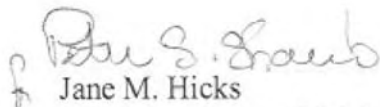
Your proposed activity is within our jurisdiction and a permit will be required for your project. Application for Corps authorization should be made to this office using the enclosed application and instructions (Enclosure 2). The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements in the enclosed application instructions. You should note, in planning your project, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a Public Notice for a period of 30 days.

Our Nationwide Permits and Regional General Permits have already been issued to authorize certain activities provided specified conditions are met. Your completed application will enable us to confirm that your activity is already authorized. You are advised to refrain from starting your proposed activity until we make a determination that the project is covered by an existing permit. Commencement of work before you receive our notification will be interpreted as a violation of our regulations.

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; March 28, 2000), and outlined in the enclosed flowchart (Enclosure 3) and "Notification of Administrative Appeal Options, Process, and Request for Appeal" form (NAO-RFA)(Enclosure 4). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

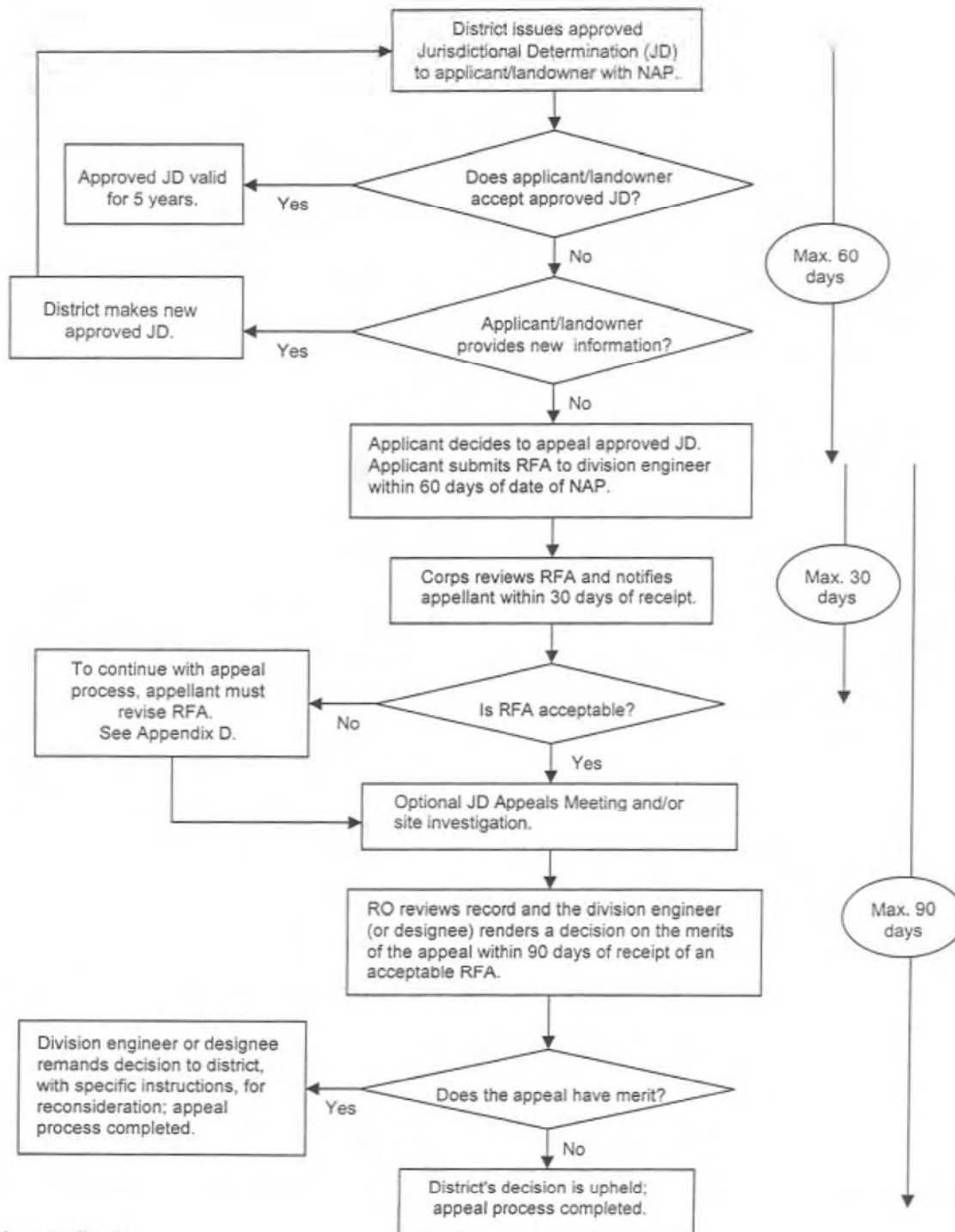
Should you have any questions regarding this matter, please call David Ammerman of our Regulatory staff at 707-443-0855. Please address all correspondence to the Eureka Field Office, USACE, Woodley Island, 601 Startare Drive, Eureka, CA 95501, and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,

  
Jane M. Hicks  
Chief, Regulatory Division

Enclosures

## Administrative Appeal Process for Approved Jurisdictional Determinations



## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Trinity River Restoration Program		File No. 2008-00031N	Date: 01-18-2008
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT ENGINEER for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this Notice and return the Notice to the DISTRICT ENGINEER. Your objections must be received by the DISTRICT ENGINEER within 60 days of the date of this Notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your NOTICE, the DISTRICT ENGINEER will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the DISTRICT ENGINEER will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT ENGINEER for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this NOTICE and sending the NOTICE to the DIVISION ENGINEER. This Notice must be received by the DIVISION ENGINEER within 60 days of the date of this Notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this Notice sending the Notice to the DIVISION ENGINEER. This Notice must be received by the DIVISION ENGINEER within 60 days of the date of this Notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this Notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this Notice and sending the Notice to the DIVISION ENGINEER. This Notice must be received by the DIVISION ENGINEER within 60 days of the date of this Notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Ms. Jane M. Hicks, Chief, Regulatory Division  
U.S. Army Corps of Engineers, San Francisco District  
1455 Market Street, Attn: CESP-NR  
San Francisco, CA 94103-1398  
Tel. (415) 503-6771 FAX (415) 503-6690

If you only have questions regarding the appeal process you may also contact:

Mr. Thomas J. Cavanaugh, Appeal Review Officer  
U.S. Army Corps of Engineers, South Pacific Division  
1455 Market Street, Attn: CESP-D-PDS-O  
San Francisco, CA 94103-1399  
Tel. (415) 503-6574 FAX (415) 503-6646

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:



**Instructions for Preparing a  
Department of the Army Permit Application**

**Blocks 1 through 4.** To be completed by Corps of Engineers.

**Block 5. Applicant's Name.** Enter the name of the responsible party or parties. If the responsible party is an agency, company, corporation or other organization, indicate the responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked **Block 5**.

**Block 6. Address of Applicant.** Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked **Block 6**.

**Block 7. Applicant Telephone Number(s).** Please provide the number where you can usually be reached during normal business hours.

**Blocks 8 through 11.** To be completed if you choose to have an agent.

**Block 8. Authorized Agent's Name and Title.** Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer or any other person or organization. Note: An agent is not required.

**Blocks 9 and 10. Agent's Address and Telephone Number.** Please provide the complete mailing address of the agent, along with the telephone number where he/she can be reached during normal business hours.

**Block 11. Statement of Authorization.** To be completed by applicant if an agent is to be employed.

**Block 12. Proposed Project Name or Title.** Please provide name identifying the proposed project (i.e., Landmark Plaza, Burned Hills Subdivision or Edsall Commercial Center).

**Block 13. Name of Waterbody.** Please provide the name of any stream, lake, marsh or other waterway to be directly impacted by the activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

**Block 14. Proposed Project Street Address.** If the proposed project is located at a site having a street address (not a box number), please enter here.

**Block 15. Location of Proposed Project.** Enter the county and state where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked **Block 15**.

**Block 16. Other Location Descriptions.** If available, provide the Section, Township and Range of the site and/or the latitude and longitude. You may also provide description of the proposed project location, such as lot numbers, tract numbers or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile down from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed project site if known.

**Block 17. Directions to the Site.** Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site.

**Block 18. Nature of Activity.** Describe the overall activity or project. Give appropriate dimensions of structures such as wingwalls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles or float supported platforms.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked **Block 18**.

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT  
(33 CFR 325)

OMB APPROVAL NO. 0710-0003  
Expires December 31, 2004

The Public burden for this collection of information is estimated to average 10 hours per response, although the majority of applications should require 5 hours or less. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research and Sanctuaries Act, 33 USC 1413, Section 103. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO. <u>2008-00031</u>	2. FIELD OFFICE CODE <u>E4</u>	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
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(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required)
6. APPLICANT'S ADDRESS	9. AGENT'S ADDRESS
7. APPLICANT'S PHONE NOS. W/AREA CODE	10. AGENT'S PHONE NOS. W/AREA CODE
a. Residence	a. Residence
b. Business	b. Business

11.

STATEMENT OF AUTHORIZATION

I hereby authorize, \_\_\_\_\_ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE

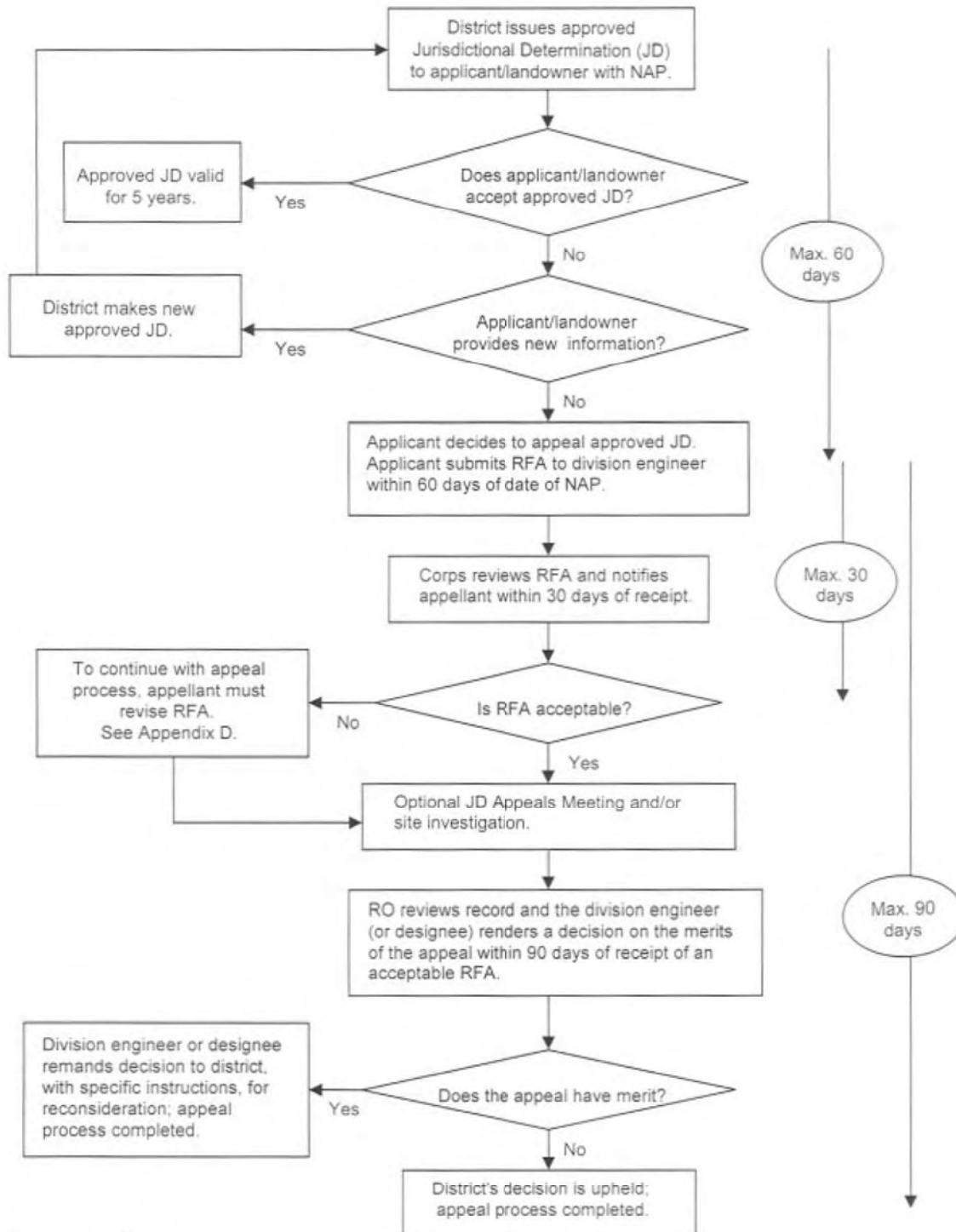
DATE

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)	
13. NAME OF WATERBODY, IF KNOWN (if applicable)	14. PROJECT STREET ADDRESS (if applicable)
15. LOCATION OF PROJECT	
COUNTY _____	STATE _____
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (see instructions)	
17. DIRECTIONS TO THE SITE	



### Administrative Appeal Process for Approved Jurisdictional Determinations



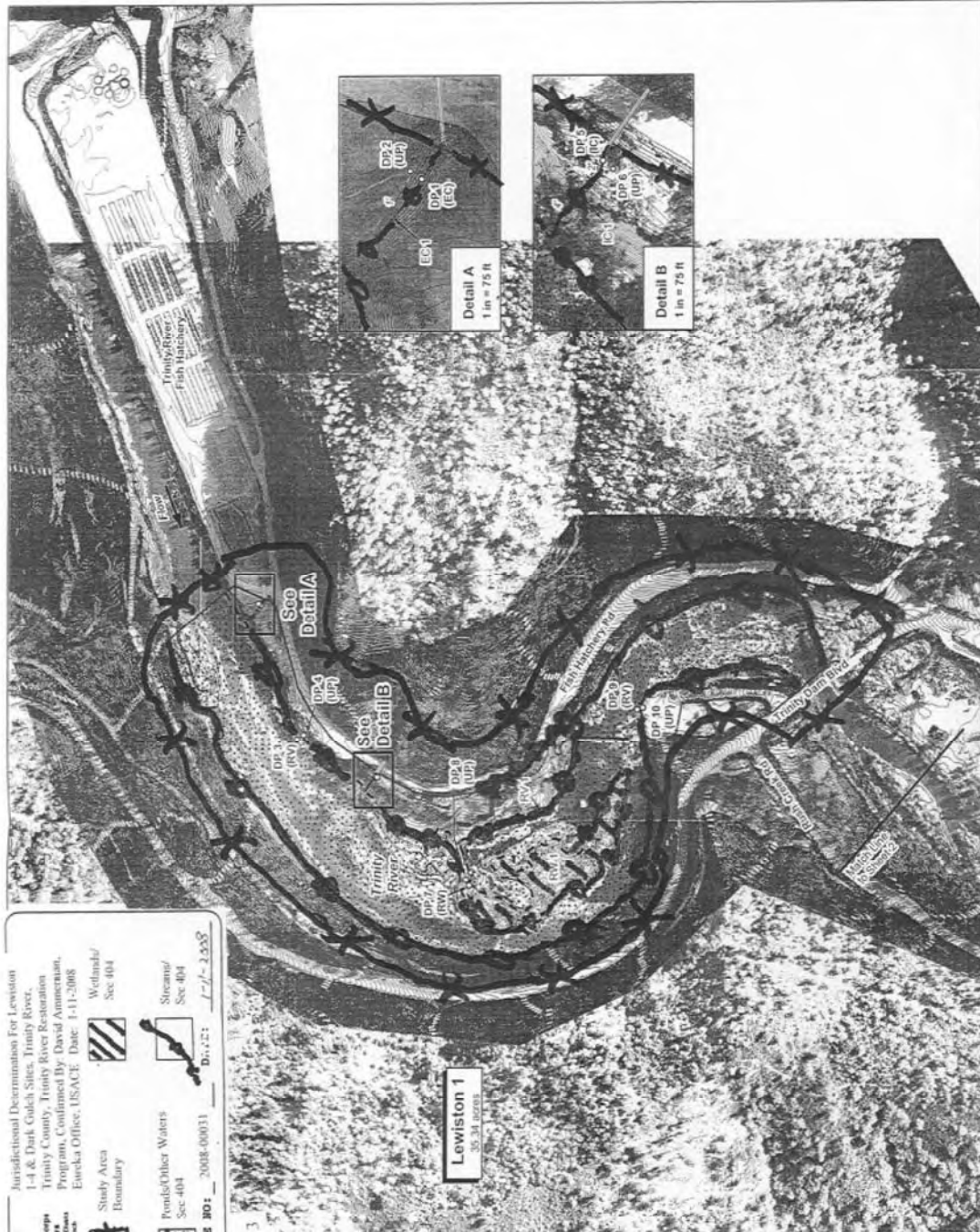


Figure 4 - Sheet 1. Boundaries of Waters of the United States, Including Wetlands  
July, 2005



**Lewiston 1 - 4 and Dark Gulch Channel Rehabilitation Sites,  
Delineation of Waters of the U.S.**

This delineation of matters of the United States, including welfare, is subject to verification by the U.S. Army Corps of Engineers (ACOE). The ACOE provides all parties to treat the information contained herein as preliminary until the ACOE provides written verification of the boundaries of their jurisdiction.



Figure 4 - Sheet 2. Boundaries of Waters of the United States, Including Wetlands

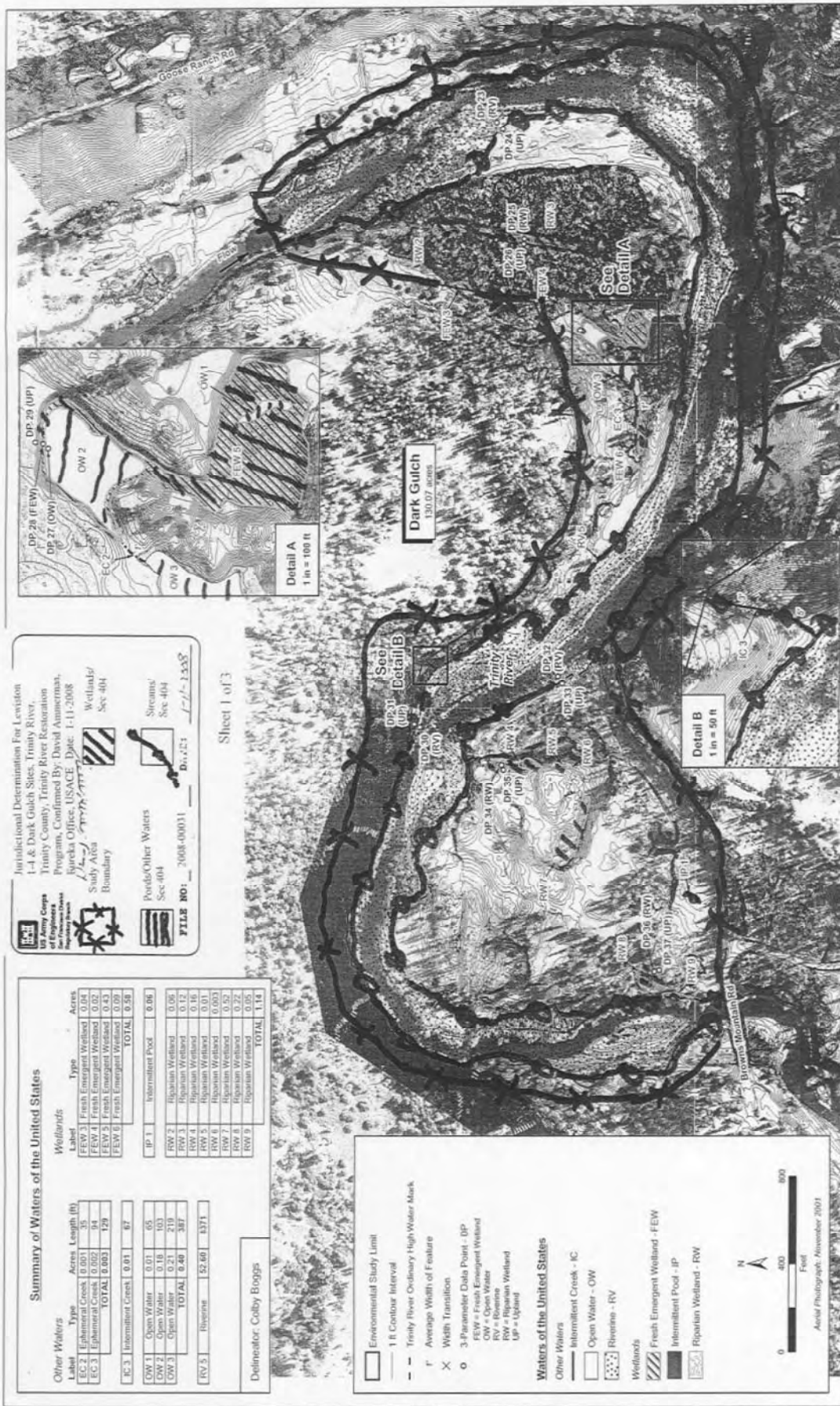


Figure 4 - Sheet 3. Boundaries of Waters of the United States, Including Wetlands

This delineation of waters of the United States, including wetlands, is subject to verification by the U.S. Army Corps of Engineers (ACEE). ACEE will advise all parties to treat the information contained herein as preliminary until the ACEE provides written verification of the boundaries of their jurisdiction.